

2023:PHHC:109690

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-7224-2010 (O&M)
Date of Decision: August 21, 2023

Savita Gulati

...Appellant

VERSUS

Manjit Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Anil Kumar Spehia, Advocate
for the appellant.

Mr.Harinder Pal Singh, Additional Standing Counsel, U.T.,
for respondents No.2 and 3.

ARCHANA PURI, J.

This appeal arises out of the motor accident claim, following the serious injuries suffered by the appellant-claimant, on 09.09.2006, on account of rashness and negligence, on the part of respondent No.1-Manjit Singh, while driving bus bearing registration No.CH-01-G1-5920.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation to the extent of Rs.13,50,000/- to the appellant.

Aggrieved by the same, the present appeal has been preferred by the appellant-claimant for seeking compensation under several heads, where no amount has been awarded by learned Tribunal and also for

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enhancement of the amount awarded by learned Tribunal, under different heads.

At the very outset, it is pertinent to mention that so far as fact of accident and manner of taking place of the same as well as the liability of the driver, owner and insurer of the offending vehicle to be joint and several, are concerned, no appeal, as such, has been filed by the persons, who had been made liable, to challenge the Award and thus, the finding so arrived, has attained finality.

It is only an appeal, filed by the injured-claimant for seeking enhancement of the compensation.

The appellant-claimant Savita Gulati, on the fateful day i.e. 09.09.2006, suffered serious injuries, resulting into permanent disability to the extent of 83% of the whole body.

At first instance, disability was assessed and disability certificate, Ex.PW7/A was proved by way of examination of Dr.Dhiraj Khurana, who stepped into witness box as PW-7, who was the member of the Medical Board, which assessed the disability. The said certificate Ex.PW7/A reveals about the appellant to be a case of **'Road Side Accident with hypoxic ischemic brain injury'** and **she had suffered 83%, impairment, in relation to her whole body**. However, further note was given in the said certificate, whereby, reassessment was recommended, after a period of five years. This disability certificate is dated 25.09.2009. As such, at the time, when the claim petition was decided vide impugned Award, the period of five years had not lapsed and consequently, this disability certificate was taken into consideration. Thereafter, during the pendency of the present appeal bearing

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FAO-7224-2010, fresh disability was assessed and by way of additional evidence, fresh disability certificate has come on record. Perusal of the same reveals that the appellant-claimant has been assessed to be a case of Multiple Disability. Further, it has been observed that the diagnosis in her case is **‘Old case of Road side accident with Quadri-paresis due to Hypoxic brain injury and fracture S/T Right with implants in situ, with Ataxia and Dysarthria. Disability 83% in relation to whole Body. (Permanent).** Further, it was observed that **she has 83% (in figure) Eighty Three percent (in words) Permanent Disability in relation to her Brain, WHOLE BODY.**

To so substantiate, the nature and kind of injuries, so suffered and the manner of treatment, besides, father of the appellant, stepping into witness box, as PW-5 and tendering his affidavit as Ex.PW5/A, various doctors, as such, have also been examined.

Firstly, PW-1 Dr.Anjali Arora, MO General Hospital, who deposed about patient to have been examined on 09.09.2006 and also further deposed about the detail of the injuries and she proved her report Ex.PW1/A.

PW-2 Vinod Kumar, Store Keeper of Alchemist Hospital, Panchkula, also deposed about appellant Savita, to have remained admitted in their hospital for treatment w.e.f. 04.10.2006 to 13.10.2006 and he proved the treatment card, which is Ex.PW2/A and the bill issued by their hospital is Ex.PW2/B.

PW-3 Dr.Rohit Sharma, Senior Resident, Department of Orthopedics, GMCH, Sector-32, Chandigarh, also deposed about admission of the appellant-claimant in their hospital w.e.f. 09.09.2006 till 11.09.2006, with regard to the injuries, sustained by her in the accident and he deposed it to be

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case of *road side accident and that the patient sustained fracture right superior and interior pubic rami and fracture right femur with perineal laceration*. Also, he deposed about patient to have been operated on 10.09.2006 by Gynecologist and perineal repair was done. The patient developed respiratory distress on 11.09.2006, for which ICU consultation was done and since, there was no bed available in the ICU, the patient was referred to PGI, Chandigarh. This witness proved the copy of treatment record, which is Ex.PW3/A.

PW-4 Dr.Prasanna, Senior Resident, Department of Orthopedics, PGI, Chandigarh also deposed about patient to have been admitted in PGI on 11.09.2006, with the complaint of fracture right femur and also fracture pelvis and the patient was admitted in ICU with probable diagnosis of fat embolism syndrome. This witness also deposed about Savita to have been operated upon for the fracture femur on 16.09.2006 and she was not fully conscious. The patient was bed ridden at that time. She was discharged on 03.10.2006 and was advised bed rest for six weeks. This witness proved the treatment card, which is Ex.PW4/1.

As already observed aforesaid, the father of the appellant-claimant also deposed about the kind of treatment extended to the appellant and furthermore, deposed about health issues faced by the appellant-claimant, on account on injuries, sustained by her in the accident in question.

In this backdrop, at the very outset, it is pertinent to mention that the Motor Vehicles Act is in the nature of social welfare legislation and its provisions make it clear that compensation should be '**justly**' determined. A person therefore is not only to be compensated for the injury suffered due

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to the accident but also for the loss suffered on account of the injury and his inability to lead the life he led, prior to the life altering event. A three Judges' Bench in *Jagdish Vs. Mohan and others, 2018 (4) SCC 571*, made the following relevant observations, on the intrinsic value of human life and dignity that is attempted to be recognised, through such compensatory awards:-

“...the measure of compensation must reflect a genuine attempt of the law to restore the dignity of the being. Our yardsticks of compensation should not be so abysmal as to lead one to question whether our law values human life. If it does, as it must, it must provide a realistic recompense for the pain of loss and the trauma of suffering. Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law.”

The Courts should, as such, strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of disability and its impact, including the income generating capacity of the claimant and not only that, even the impact of the accident on his/her life, on account of his/her physical disability. The Courts should be mindful of the fact that though, the physical disability may be on the lesser count but the functional disability, on account of injury sustained, can always be on higher side.

The extent of economic loss, arising from a disability, may not be measured in proportions, to the extent of permanent disability. In this regard, suffice to make reference to the decision rendered by the Supreme Court in *Raj Kumar Vs. Ajay Kumar and Anr., 2011 (1) SCC 343*.

As already observed aforesaid, the injured had suffered serious

injuries, resulting into permanent disability to the extent of 83% of the whole body. She had suffered '**hypoxic ischemic brain injury**', which results from damage to the part of the brain called cerebellum, which helps in coordination of muscle movement. It also lead to slurred speech, apart from irregular and slow movement of the muscles. As per the medical evidence, coming on record, she had suffered fracture right superior and interior pubic rami and fracture right femur with perineal laceration and she had undergone surgery on 10.09.2006 by the Gynecologist. On account of 'fat embolism syndrome', on account of injuries, so sustained in the accident, she was further referred to PGI, Chandigarh, where she had also undergone operation for the fracture femur on 16.09.2006.

The injuries, as evident aforesaid, are permanent in nature, apparently, making the appellant-claimant, unfit for any employment. Even though, the disability may be 83%, the kind of injuries, so suffered, make it absolutely impossible for a person to work and be gainfully employed. Considering the nature of disability, there is bound to be loss of movement of all the four limbs and further having impact, upon the speech and also decrease in body functionality. Considering this kind of condition of the appellant-claimant, even after such a long time of the accident, as such, the loss of income is held to be 100%. Considering the educational input of the appellant-claimant, as per the educational certificates, coming on record as Ex.PX, PY and PZ and she being science student, preparing for P.M.T., in modest estimate, while relying upon *Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRs and others, 2023(3) RCR (Civil) 573*, wherein, reliance was further made on *Lalan D. @ Lal and another vs. The*

Oriental Insurance Company Limited, 2020(4) RCR (Civil) 441, the income of the appellant is assessed to be **Rs.20,000/-** per month.

Since, it is not the case of death, but it is a case of injury, as such, in view of the *Rahul Ganpatrao Sable's case (supra)*, there does not arise question of deduction, towards personal expenses.

From the evidence adduced and more particularly, from the educational certificates, which have been proved, the date of birth of the appellant-claimant is established to be 21.11.1989. As such, at the time of accident, she was about 20 years old. Looking at her age, in consonance with the *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the suitable multiplier to be applied is '18'. Thus, the 'loss of income' comes to be **Rs.20000x12x18=Rs.43,20,000/-**.

Looking at the kind of injuries, so sustained by the appellant-claimant, which made her invalid, the grant of compensation to the extent of Rs.2.5 lakh, on the count of 'pain and suffering', is too less, and deserves to be enhanced. Considering the observations made in *Rahul Ganpatrao Sable's (supra)*, under this head, compensation stands enhanced to **Rs.3.5 lakh**. A consolidated amount of Rs.5 lakh has been granted by learned Tribunal, on the account of expenses incurred on the medical treatment, as well as for conveyance, rich diet, attendant charges and physiotherapist. However, this amount is miserably on a lower side. Moreover, on various counts, it ought to be bifurcated and assessed under separate heads.

The various bills of the expenditure, so incurred, which co-relate to the treatment undergone by the appellant, soon after the accident, stand amply established. The total of the said bills, proved in evidence, is to

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the extent of **Rs.2,84,869/-**, which is rounded off as **Rs.2,85,000/-**. This is the amount, which has been actually established to have been incurred, on account of medical treatment of the appellant-claimant.

Besides the same, looking at the kind of injuries sustained by the appellant-claimant, it is quite obvious that on account of use of the conveyance for 'to and fro' to the hospital, substantial amount must have been spent by the family of the appellant-claimant. Few of the bills have been proved in evidence, approximately, to the extent of **Rs.12,000/-**. Obviously, during the period of treatment and some time thereafter, in the minimum, the appellant-claimant must have been put on special rich diet, for the healing process. On this count also, another sum of **Rs.50,000/-** is granted.

Furthermore, for some period of time, after the accident, in the minimum and even, looking at her condition with permanent disability of 83% and more particularly, looking at the kind of injuries sustained, the appellant-claimant must have been looked after by a bye-stander/attendant throughout. Though, learned counsel for respondents No.2 and 3 submits that there is no material, as such, produced by the appellant-claimant, on actual expenses, incurred for the services of the attendant and it is argued that no further claim is merited under this head, but however, this submission is not tenable. Considering the extent of disability suffered, beside the family members, the appellant-claimant ought to have been looked after by one attendant throughout, as there was need for assistant living. Even if, the appellant-claimant is being looked after by her family members, then also, it should be noted that they could perform the role of

care-giver, only by diverting their own time, from any form of gainful employment, which could have generated some income.

Considering the same, while relying upon *Lalan D.’s case (supra)*, composite amount for attendant charges and also considering the future medical treatment, which the appellant-claimant is bound to undergo, a lumpsum of **Rs.4 lakh** is granted.

No compensation has been awarded on the count of ‘**loss of marriage prospects**’. Considering the nature of injuries, duly proved, the appellant-claimant is entitled to compensation on the count of ‘loss of marriage prospects’ and therefore, fixed compensation of Rs.3 lakh is granted.

Thus, on various counts, as detailed aforesaid, the compensation is re-computed as herein given:-

1.	Loss of income	Rs.43,20,000/-
2.	Pain and suffering	Rs.3,50,000/-
3.	Medical Bills	Rs.2,85,000/-
4.	Conveyance charges	Rs.12,000/-
5.	Special rich diet	Rs.50,000/-
6.	Attendant charges and and future medical treatment	Rs.4,00,000/-
7.	Loss of Marriage prospects	Rs.3,00,000/-
	Total	Rs.57,17,000/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.57,17,000-13,50,000=Rs.43,67,000/-**. On the enhanced amount of the compensation i.e. **Rs.43,67,000/-**, the appellant-claimant shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till

realization of the enhanced amount of compensation.

Accordingly, the impugned Award dated 20.01.2010 stands modified, to the extent, as indicated aforesaid. The remaining terms of the impugned Award, shall remain the same.

With the above observations, the present appeal stands allowed.

August 21, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No